

David P. Fleming
Senior Legal Counsel, Gannett Co., Inc.
General Counsel, Gannett Broadcasting



November 16, 2006

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COMMISSION
OFFICE OF GENERAL
COUNSEL
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Federal Election Commission
Office of General Counsel
999 E Street, NW
Washington, DC 20463

Attention: Jeff S. Jordan, Supervisory Attorney
Complaints Examination & Legal Administration

Re: MUR 5858

Dear Mr. Jordan:

On behalf of television station KNAZ-TV, Flagstaff, Arizona, this will respond to the referenced complaint which was received November 2, 2006. The Complaint claims that KNAZ failed to comply with FEC laws and ethical standards since it did not include a third party candidate (Richard Mack, "Complainant") in a October 20, 2006 televised debate for the office of United States Senator for Arizona

This response does not address the decision by two other television stations either to include or exclude Complainant from the debates hosted by those stations since it is not relevant to the disposition of this matter. As will be shown below, the Federal Election Commission should find no reason to believe a violation occurred and should dismiss this matter.

This was the first debate ever hosted by KNAZ-TV, and it agreed to do so, thereby preempting its highly rated 6:00 pm Friday evening local newscast, as a public service to the voters in Northern Arizona. In making a determination as to which candidates to include in the debate, KNAZ took into consideration the following factors

1 The public record reflects that Complainant did not have an organized campaign committee on file with the Federal Election Commission, and to our knowledge, he had not raised or spent any funds in connection with his "campaign." Thus, while Complainant may technically have been on the ballot in Arizona, he does not appear to have met the criteria of being a "candidate" for the Federal Election Campaign Act or FEC regulatory purposes. Thus, based on these criteria alone, he was not a viable candidate for election.

2. Putting aside that he had no campaign committee, polls taken throughout the campaign and in the period prior to the debate showed a very close race between the incumbent Jon Kyl (R) at

40% and Jim Pederson (D) at 34%. Minimal support (2%) was shown for Complainant who was described as a "non-player." See attached news release and at <http://www.brcpolls.com/06/RMP-2006-III-06.pdf>. Since it was the station's criteria that only viable candidates would be able to participate in the debate, an individual polling at 2% was not a viable candidate.

3. The length of the debate did not lend itself to inviting a non-viable candidate to participate. The debate was scheduled for 6:00 -7:00 pm MST. Given this relatively short period of time, a one-hour debate between two candidates only allows for approximately ten questions to be asked. With the wide range of topics to be addressed (foreign policy, domestic policy, and regional Arizona issues), including an individual who did not even have a campaign committee or campaign headquarters would reduce the effectiveness of the debate in educating voters on the issues. Thus, it was within the station's editorial discretion to host a debate that would be of most use to the voters of the State.

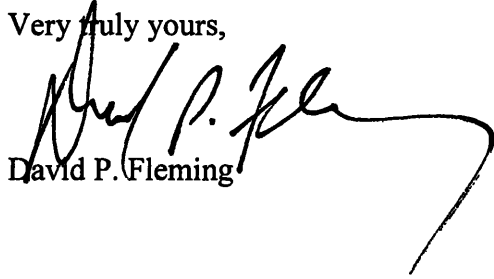
4. Finally, as noted above, Complainant had not participated as an active campaigner in the election. It should be noted that KNAZ was at all times during the campaign prepared to make available to Complainant the opportunity to purchase equivalent time to that of the other candidates as required by law.

Complainant's allegation that KNAZ excluded him because the other candidates threatened not to debate if he were present is without merit. Mr. Parra never made such a statement, and KNAZ believes Complainant may be confusing this with another debate. In any event, even if the candidates expressed this preference, it would have been one of several requests made by both campaign organizations which were ignored by KNAZ in establishing parameters for the debate. For example, demands were made that (i) Mr. Parra be the moderator, (ii) the questions be pre-screened by candidates, (iii) an advanced list of topics to be covered be provided, and (iv) a podium rather than a round table be used on stage. None of these were agreed to, and KNAZ structured the debate in the manner it deemed most appropriate.

In summary, Complainant was not invited to participate because he was not a viable candidate. He failed to register a campaign committee with the Federal Election Commission, his polling numbers (2%) were negligible, he had no appreciable campaign headquarters or strategy established in the state, and he spent no funds trying to get elected. For FEC purposes, he was not a candidate, and there was no requirement that he be invited to debate.

For the foregoing reasons, the Complaint should be dismissed.

Very truly yours,


David P. Fleming



behavior research center's

Rocky Mountain Poll

NEWS RELEASE [RMP 2006-III-06]

Contact Earl de Berge
Research Director

U.S. SENATE RACE TIGHTENING UP

Phoenix, Arizona October 5, 2006 Within the overall Arizona electorate, Democrat Jim Pederson has closed to within six points of incumbent Republican Jon Kyl (Kyl 40% to Pederson 34%) Libertarian candidate Richard Mack is a non-player at two percent, while a quarter of voters are still fence sitting

Among voters most likely to cast ballots in a low turnout election, Pederson trails by nine points (45% to 36%) yet roughly a fifth of high efficacy voters remain undecided The main dynamic since our last survey in July is that Jon Kyl's share of the vote declined from 45 percent to 40 percent while Pederson gained ground from 27 to 34 percent

Pederson's chances for success may be critically tied to whether voter turnout is robust A low turnout election favors Kyl and, unless Democratic voters turn out in large numbers to support the re-election of Governor Janet Napolitano and perhaps provide some coattails to Pederson, Pederson will have difficulty closing the ten point gap among voters most likely to vote in a low turnout election Nonetheless, Pederson's rising popularity within the overall electorate traces to several factors, of which the following may be most important

First, Pederson is firming up his vote within the ranks of Democrats In July, only 55 percent of Democrats were committed to Pederson Today, 66 percent are in his column and the proportion defecting to Kyl has dropped to 15 percent from 19 percent in July Pederson television commercials have recently begun to criticize Kyl's support of President Bush's Iraq policies, a criticism that some observers believe hard line Democrats have been waiting to hear

Kyl enjoys wide support among registered Republicans (67%) yet the defection among older voters is noticeable here as well In July, Kyl was attracting 79 percent of the GOP vote

Second, Kyl has only a two point lead among retirees (43 to 41%) Retirees usually vote in disproportionately large numbers and tend to favor GOP candidates Pederson's competitiveness for their vote may neutralize the usual GOP advantage whether their turnout

-more-

is high or not. His appeal to older voters may trace to hard hitting and sustained campaign commercials critical of Kyl's votes on social security and Medicare. Kyl's response commercials may signal that his own polling has revealed softening of support among older voters.

We also register strong evidence of voter polarization by income. Jon Kyl leads Jim Pederson by two to one among Arizona's wealthiest voters but Pederson leads Kyl by 43 to 28 percent among lower income voters. In addition, Pederson is running slightly ahead in middle income families.

Geographically, Kyl's lead has remained unchanged in Arizona's rural counties, but Pederson has gained ground in both Maricopa and Pima. In July, Pederson trailed Kyl by 18 points in Maricopa county, but today the gap is only six points. In Pima county, Pederson trailed by 15 points in July, but today, he trails by only three points. Despite these gains in Pima, it is odd that Pederson has yet to emerge as a favorite in a county where the Democrats enjoy a registration advantage.

Finally, Pederson has gained a modest lead among women voters. Within their ranks, he leads 37 to 34 – a seemingly small accomplishment, yet he trailed Kyl among women voters in July by seven points. Jon Kyl continues to have a wide lead over Jim Pederson among men – today 47 percent to 30 percent. However, in July, he led by 50 to 22 percent.

Another surprise is that Pederson has not yet shown strength in the Latino community and may actually have lost ground since July. Among African American and Native American voters, however, Pederson does quite well.

Finally, among voters who turned out in the Primary election, only seven points separate the candidates. Kyl 44 percent to Pederson 37 percent.

Overall, then, while incumbent Jon Kyl remains ahead in the race, it appears to be tightening up as challenger Pederson begins to show success in solidifying Democrats behind his candidacy, finding more support among women and becoming very competitive for the vote of retirees across the state.

The findings outlined in this report are based on a survey of 625 voters across Arizona conducted between Sept 26th and Oct 3rd, 2006, by the Behavior Research Center of Arizona as part of the Center's independent and non-partisan Rocky Mountain Poll series. The public is welcome to visit www.brcpolls.com to read this and other recent polls.

EDITOR'S NOTE This Rocky Mountain Poll Arizona (2006-III-06) is based on 625 telephone interviews with voters across Arizona, conducted from Sept 26th through Oct 3rd, 2006. In the overall sample, one may say with 95 percent certainty that the results have a statistical precision of plus or minus 4.0 percent of what they would have been had the entire adult population been surveyed. The Rocky Mountain Poll is conducted by the Behavior Research Center of Arizona and is an independent and non-partisan research program.

This statement conforms to the principles of disclosure of the National Council on Public Polls

ENCLOSED: Statistical data for reference

STATISTICAL DATA

Behavior Research Center
Rocky Mountain Poll – Arizona
2006-III-06

For this and other polls, see www.brcpolls.com/results

"If the election for U.S. Senator from Arizona were being held today, would you vote for the Republican Jon Kyl, the Democrat Jim Pederson, or the Libertarian Richard Mack?" (Names Rotated)

	Oct 2006	July 2006	May 2006	Jan 2006	Oct 2005
Jon Kyl	40%	45%	40%	55%	54%
Jim Pederson	34	27	33	26	30
Richard Mack	2	3	NA	NA	NA
Undecided	<u>21</u>	<u>25</u>	<u>27</u>	<u>19</u>	<u>16</u>
	100%	100%	100%	100%	100%

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## Oct 2006 Detail

|               | Kyl | Pederson | Mack | Undecided |
|---------------|-----|----------|------|-----------|
| State Total   | 40% | 34%      | 2%   | 24%       |
| Likely Voters | 45  | 36       | 1    | 18        |
| Maricopa      | 40  | 34       | 1    | 25        |
| Pima          | 36  | 33       | 2    | 29        |
| Rural         | 43  | 34       | 3    | 20        |
| Men           | 47  | 30       | 3    | 20        |
| Women         | 34  | 37       | 1    | 28        |
| Republican    | 67  | 10       | 2    | 21        |
| Democrat      | 15  | 66       | 1    | 18        |
| Independent   | 31  | 28       | 2    | 39        |
| Low Income    | 28  | 43       | 3    | 26        |
| Middle Income | 35  | 38       | 2    | 25        |
| High Income   | 51  | 26       | 1    | 22        |

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AFFIDAVIT

The undersigned, being first duly sworn, does hereby state as follows:

1. I am Station Manager of KNAZ-TV.
2. I participated in the preparation of, and have reviewed, the attached Response in Matter MUR 5858.
3. The facts contained in the Response are true and correct to the best of my information, knowledge and belief.

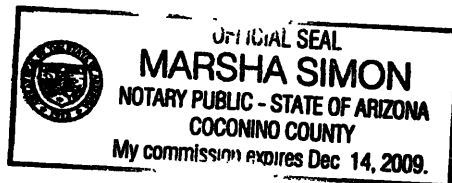

Jerome Parra

Subscribed and sworn to before me
this 15 day of November, 2006


Notary Public

My Commission expires:

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